HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 3151 of 2006

Between:

M/s Indo Aquatics Limited,

Vamsee Estates, Ameerpet, Hyderabad .. Petitioner

AND

The Superintendent of Customs and

Central Excise, Range-I, Nellore and

others ..Respondents.

Counsel for the Petitioner: Sri K.Ramachandra Reddy

Counsel for the Respondents: Sri A.Rajashekar Reddy,

Asst. Solicitor General.

Dated: February 21, 2006

ORDER:

Per G.S.Singhvi, C.J.

This is a petition for quashing order dated August 16, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short 'the Tribunal') vide which the appeal filed by the petitioner against the order of assessment passed by the Commissioner of Customs and Central Excise, Guntur was dismissed on the ground of non-deposit of the amount in terms of order dated January 28, 2005 passed by the Tribunal.

Petitioner claims to be 100% Export Oriented Unit operating at Kothakoduru Village in Nellore District and is engaged in farming and hatching in prawns and prawn seeds. It is registered under the Central Excise Act, 1944. Vide show cause notice dated 12-5-1999, Commissioner of Customs and Central Excise, Kannavari Thota, District Guntur call upon the petitioner to show cause against proposed levy of central excise duty at the rate of 16% Adv. on the value of 5 DG sets and penalty under Rule 209 of the Central Excise Rules, 1944 (for short 'the Rules'). It was also asked to show cause against the proposed levy of penalty and charging of interest under Section 11AC and 11AB respectively. After considering the reply of the petitioner, Additional Commissioner of Central Excise, Guntur vide his order dated 29-7-2002 confirmed the demand of Rs.4,38,462/- and also imposed penalty and levied interest under Sections 11AC and 11AB of the Act. On appeal, Commissioner (Appeals) vide his order dated 11-2-2004 confirmed the demand of duty, but set aside the penalty imposed under Section 11AC of the Act. He also reduced the amount of penalty imposed under Rule 209 of the Rules.

Feeling dissatisfied with the appellate order, the petitioner filed further appeal before the Tribunal. It also filed an application for waiver of pre-deposit of Rs.4,38,462/- towards duty and other amounts representing penalty. Another appeal was filed by the petitioner against the demand of Rs.10,99,087/- towards duty and an equivalent sum of penalty. It also filed an application for waiver of pre-deposit on the amount of duty and penalty. By an order dated 28-1-2005, the Tribunal directed the petitioner to deposit the amount of duty within two months and made it clear that if the amount of duty and penalty is not deposited, the appeal shall be liable to be dismissed under Section 35-F of the Act.

The petitioner filed applications for modification of order dated 28-1-2005, but could not persuade the Tribunal to reconsider its decision in the matter of pre-deposit of the amount of duty and penalty as a condition precedent to the hearing of the appeal. By an order dated 18-5-2005, the Tribunal dismissed the applications, but granted two months further time for compliance of order dated 28-1-2005. On the last date for deposit of the amount and penalty, the petitioner filed another application for modification. When the same was listed for hearing

before the Tribunal, no one appeared on behalf of the petitioner. After considering the averments contained in the applications and the fact that the petitioner has not deposited the amount of duty, the Tribunal dismissed the appeals under Section 35F of the Act, but gave liberty to the petitioner to apply for restoration after pre-deposit of the amount.

We have heard Sri K.Ramchandra Reddy, learned counsel for the petitioner and Sri A. Rajeshekar Reddy, learned Assistant Solicitor General and are convinced that the writ petition is liable to be dismissed for the simple reason that the petitioner has neither challenged the order of assessment nor order dated January 28, 2005 vide which the Tribunal directed it to deposit the disputed amount as a condition precedent for hearing of the appeal.

In our opinion, without challenging order dated January 28, 2005 the petitioner cannot seek invalidation of the consequential order resulting in dismissal of the appeal.

With the above observation, the writ petition is dismissed. However, liberty is given to the petitioner to file fresh petition for challenging order dated January 28, 2005 along with the order impugned in this petition.

G.S.SINGHVI, C.J.

February 21, 2006

G.BHAVANI PRASAD, J.

GRR / svs